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the registration statement was in effect is substituted for the period(s) otherwise prescribed; and *Provided further*, That such quotations—

(i) Are based on the methods of computation prescribed in Form N-1A, N-3, or N-4;

(ii) Are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Are set out with equal prominence; and

(iv) Identify the length of and the last day of the one, five, and ten year periods.

(4) For an open-end management investment company, average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) for one, five, and ten year periods; *Provided*, That if the company's registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed; and *Provided further*, That such quotations:

(i) Are based on the methods of computation prescribed in Form N-1A;

(ii) Are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Are accompanied by quotations of total return as provided for in paragraph (e)(3) of this section;

(iv) Include both average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption);

(v) Are set out with equal prominence and are set out in no greater prominence than the required quotations of total return; and

(vi) Identify the length of and the last day of the one, five, and ten year periods; and

(5) Any other historical measure of company performance (not subject to any prescribed method of computation) if such measurement:

(i) Reflects all elements of return;

(ii) Is accompanied by quotations of total return as provided for in paragraph (e)(3) of this section;

(iii) In the case of any measure of performance adjusted to reflect the effect of taxes, is accompanied by quotations of total return as provided for in paragraph (e)(4) of this section;

(iv) Is set out in no greater prominence than the required quotations of total return; and

(v) Identifies the length of and the last day of the period for which performance is measured.

(f) An advertisement for an open-end management investment company (other than a company that is permitted under §270.35d-1(a)(4) of this chapter to use a name suggesting that the company's distributions are exempt from federal income tax or from both federal and state income tax) that represents or implies that the company is managed to limit or control the effect of taxes on company performance shall accompany any quotation of the company's performance permitted by paragraph (e) of this section with quotations of total return as provided for in paragraph (e)(4) of this section.

(g) All performance data contained in any advertisement must be as of the most recent practicable date considering the type of investment company and the media through which the data will be conveyed; *Provided, however*, That any advertisement containing total return quotations shall be considered to have complied with this provision if the total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication.

[47 FR 11446, Mar. 16, 1982, as amended at 48 FR 55725, Dec. 15, 1983; 52 FR 21262, June 5, 1987; 53 FR 3879, Feb. 10, 1988; 53 FR 9768, Mar. 25, 1988; 56 FR 8124, Feb. 27, 1991; 61 FR 24655, May 15, 1996; 62 FR 64978, Dec. 9, 1997; 63 FR 13984, Mar. 23, 1998; 66 FR 9017, Apr. 16, 2001]

### § 230.483 Exhibits for certain registration statements.

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a business development company which is selling or proposing to sell its securities pursuant to a registration

statement which has been filed under the Act, the following provisions apply:

(a) Such registration statement shall contain an exhibit index, which should immediately precede the exhibits filed with such registration statement. The exhibit index shall indicate by handwritten, typed, printed or other legible form of notation in the manually signed original registration statement the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact shall be noted in the exhibit index referred to in the preceding sentence. Further, the first page of the manually signed registration statement shall list the page in the filing where the exhibit index is located.

(b) If any name is signed to the registration statement pursuant to a power of attorney, copies of such powers of attorney shall be filed as an exhibit to the registration statement. In addition, if the name of any officer signing on behalf of the registrant, or attesting the registrant's seal, is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed as an exhibit to the registration statement. A power of attorney that is filed with the Commission shall relate to a specific filing, an amendment thereto, or a related registration statement that is to be effective upon filing pursuant to Rule 462(b) (§230.462(b)) under the Act.

(c)(1) All written consents are required to be filed as an exhibit to the registration statement, together with a list thereof. Such consents shall be dated and manually signed. Where the consent of an expert or counsel is contained in his report or opinion, a reference shall be made in the list to the report or opinion containing the consent.

(2) In a registration statement filed pursuant to Rule 462(b) (§230.462(b)) by a closed-end company, any required consent may be incorporated by reference into the registration statement from a previously filed registration statement related to the offering, pro-

vided that the consent contained in the previously filed registration statement expressly provides for such incorporation. Any consent filed in a Rule 462(b) (§230.462(b)) registration statement may contain duplicated or facsimile versions of required signatures, and such signatures shall be considered manually filed for the purposes of the Act and the rules thereunder.

(d) The registrant:

(1) May file such exhibits as it may desire in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer;

(2) In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The Commission may at any time in its discretion require filing of copies of any documents so omitted; and

(3) If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed only (i) to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commission, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement, or (ii) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, need not refile such exhibit as so amended; provided the registrant states in the amendment to the registration statement the basis provided by this rule for not refiling such exhibit. Any such incomplete exhibit may not, however, be

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incorporated by reference in any subsequent filing under any Act administered by the Commission.

[47 FR 11446, Mar. 16, 1982, as amended at 58 FR 14857, Mar. 18, 1993; 59 FR 36261, July 15, 1994; 59 FR 67761, Dec. 30, 1994; 60 FR 26618, May 17, 1995; 63 FR 13943, Mar. 23, 1998; 65 FR 24799, Apr. 27, 2000]

### § 230.484 Undertaking required in certain registration statements.

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a business development company which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, if

(a) Any acceleration is requested of the effective date of the registration statement pursuant to Rule 461 (§ 230.461), and

(b)(1) Any provision or arrangement exists whereby the registrant may indemnify a director, officer or controlling person of the registrant against liabilities arising under the Act, or

(2) The underwriting agreement contains provisions by which indemnification against such liabilities is given by the registrant to the underwriter or controlling persons of the underwriter and the director, officer or controlling person of the registrant is such an underwriter or controlling person thereof or a member of any firm which is an underwriter, and

(3) The benefits of such indemnification are not waived by such persons; the registration statement shall include a brief description of the indemnification provisions and an undertaking in substantially the following form:

Insofar as indemnification for liability arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the

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successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

### § 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

(a) *Automatic Effectiveness.* (1) Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company, unit investment trust or separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 USC 80a-2(a)(37)] shall become effective on the sixtieth day after the filing thereof, or a later date designated by the registrant on the facing sheet of the amendment, which date shall be no later than eighty days after the date on which the amendment is filed.

(2) A post-effective amendment filed by a registered open-end management investment company for the purpose of adding a series shall become effective on the seventy-fifth day after the filing thereof or a later date designated by the registrant on the facing sheet of the amendment, which date shall be no later than ninety-five days after the date on which the amendment is filed.

(3) The Commission, having due regard to the public interest and the protection of investors, may declare an amendment filed under this paragraph (a) effective on an earlier date.

(b) *Immediate Effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company, unit investment trust or separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 USC 80a-2(a)(37)] shall become effective on the date upon which it is filed with the Commission, or a later date designated by the registrant on the facing sheet of the amendment, which date shall be not later than thirty days after the date on